

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KIMBERLY ANN CLARKE,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Civil Case No. 13-11534
Honorable Linda V. Parker

Defendant.

**OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S JULY
30, 2014 REPORT AND RECOMMENDATION;
(2) GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;
(3) DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT;
(4) VACATING COMMISSIONER'S DECISION; AND
(5) REMANDING FOR RE-HEARING**

On April 4, 2013, Plaintiff filed this lawsuit challenging a final decision of the Social Security Commissioner denying Plaintiff's application for Disability Insurance Benefits under the Social Security Act. On the same date, the matter was referred to Magistrate Judge Patricia T. Morris for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation ("R&R") on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 2.) The parties subsequently filed cross-motions for summary judgment. (ECF Nos. 11,

15.)

Magistrate Judge Morris issued her R&R on July 30, 2014, recommending that this Court grant Plaintiff's motion, deny Defendant's motion, vacate the Commissioner's decision, and remand the matter for re-hearing pursuant to sentence four of 42 U.S.C. § 405(g). (ECF No. 18.) Magistrate Judge Morris recommends a remand in this matter because a transcript of the hearing before the Administrative Law Judge on November 24, 2009 is not part of the record, as it was lost during the administrative process. Magistrate Judge Morris finds that Plaintiff's testimony at the hearing with respect to her daily activities or capabilities are critical to evaluating the ALJ's decision with respect to whether Plaintiff's disabilities met or equaled a listed impairment. (*Id.* at 16-17.) The magistrate judge therefore recommends that this Court vacate the Commissioner's decision and remand for a new hearing. (*Id.* at 18.)

At the conclusion of the R&R, Magistrate Judge Morris advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at 18-19.) She further specifically advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (*Id.*) No objections to the R&R were filed.

The Court has carefully reviewed the R&R and concurs with the conclusions

reached by Magistrate Judge Morris. The Court therefore adopts Magistrate Judge Morris' July 30, 2014 Report and Recommendation.

Accordingly,

IT IS ORDERED, that Plaintiff's motion for summary judgment (ECF No. 11) is **GRANTED**;

IT IS FURTHER ORDERED, that Defendant's motion for summary judgment (ECF No. 15) is **DENIED**;

IT IS FURTHER ORDERED, that the decision of the Commissioner is reversed and this matter is remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g)

S/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: September 15, 2014

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, September 15, 2014, by electronic and/or U.S. First Class mail.

S/ Richard Loury
Case Manager